Modified PTO/SB/33 (10-05)

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number Q64768	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 09/871,816	Filed June 4, 2001
	First Named Inventor Herve GAUDILLAT	
	Art Unit 2664	Examiner John SHEW

WASHINGTON OFFICE
23373
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Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

☑ I am an attorney or agent of record.
Registration number 48,294

Signature

Allison M. Tulino
Typed or printed name

(202) 293-7060
Telephone number

August 22, 2006
Date

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Herve GAUDILLAT

Docket No: Q64768

Appln. No.: 09/871,816

Group Art Unit: 2664

Confirmation No.: 1966

Examiner: John SHEW

Filed: June 4, 2001

For: A METHOD OF MANAGING A TELECOMMUNICATION NETWORK AND A NETWORK MANAGEMENT UNIT FOR IMPLEMENTING THE METHOD

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the new Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated March 8, 2006, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

As of the final rejection, dated March 8, 2006, claims 1, 4, 5, 6, 7 and 8 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,092,113 to Maeshima ("Maeshima") in view of Applicant's alleged Admitted Prior Art ("alleged AAPA"). Also, claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maeshima, the alleged AAPA and U.S. Patent No. 6,115,382 to Abe ("Abe").

Claim 1 recites a scheduler program which spans a services management layer and a network management layer.

The Examiner acknowledges that Maeshima does not disclose the scheduler program, but continues to maintain that the alleged AAPA does.

As set forth in the January 26, 2006 Response, the portion cited by the Examiner as the alleged "AAPA" is in fact, not prior art. Rather, the cited portion forms part of the present invention. Applicant submits that the Examiner is failing to consider the clear, unequivocal statements in the specification which describe the scheduler program PGA as a feature of the present "invention."

In the Brief Description of the Drawings section, the specification clearly discloses that although Figure 1 depicts a prior art three layer management system, Figure 1 also shows the location at which the invention is implemented (pg. 4, lines 24-26) (i.e., the PGA is a separate feature from the three layer management system). In the Description of the Prior Art section, the specification further discloses that the "invention" is located at the interface of the NML and the SML as shown in Figure 1. The PGA, labeled in Figure 1 and located at the interface of the NML and the SML, is specifically described as a feature of the present invention in the non-limiting embodiment on page 5, lines 7-8 of the Detailed Description portion of the Application.

In response to the above arguments, the Examiner maintains that the specification, page 4, line 24, "clearly" states Figure 1 to be prior art, and therefore, all elements of Figure 1 are considered to be prior art since, "there is no clear demarcation" (June 19, 2006 Advisory Action). By virtue of the above statement, Applicant submits that the Examiner has improperly truncated

the sentence on page 4 of the specification. For example, as set forth above, the end of the sentence beginning at line 24 discloses that Figure 1 indicates the location at which the invention is implemented. Further, the Examiner's statement that there is no "demarcation" for the elements in Figure 1 is entirely unsubstantiated for the reasons presented above, e.g., (1) lines 25-26 of page 4 indicate that Figure 1 shows where the invention is implemented, and (2) the PGA, specifically described as a feature of the present invention, is described in more detail on page 5, lines 7-8, as being labeled in Figure 1 and located at the interface of the NML and the SML.

In summary, since the specification *clearly* indicates that the portion cited in Figure 1 (i.e., the PGA) is part of the present "invention," and **not** the prior art, Applicant submits that the PGA does not constitute prior art, and therefore, does not cure the deficient teachings of Maeshima. For at least this reason, Applicant submits that claim 1 is patentable over the cited references.

In addition, claim 1 recites that, "the step of receiving connection requests, the step of verifying the possibility of setting up the connections, and the step of updating said database are preformed by a scheduler program which spans a services management layer and a network management layer."

As set forth in the May 18, 2006 Response and the January 28, 2005, June 17, 2005, and January 26, 2006 Amendments, Maeshima merely discloses that routers (e.g. 300A, 300, and 300B) on an IP tunnel 101 transmit and receive packets which correspond to the "[contents] of a reservation [request];" (Col. 5, lines 47-48). Even if it were assumed *arguendo* that the

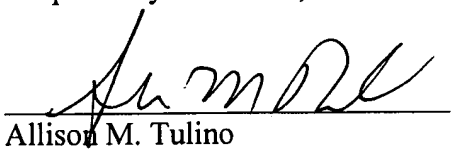
information contained in the packet also corresponds to a designated date and time for reserving bandwidth on the IP tunnel 101, since the packet is transmitted and received between the router at the start point of the IP tunnel 101 (e.g. 300A) and the router at the end point of the IP tunnel 101, (e.g. 300B) Maeshima simply does not teach that the step of receiving connection requests is performed by a scheduler program which spans a services management layer and a network management layer as claimed.

The Examiner did not respond to the above argument in the June 19, 2006 Advisory Action.

Based on the foregoing, Applicant submits that claim 1 is patentable over the cited references.

Applicant submits that claim 7 is patentable for at least analogous reasons as claim 1, and claims 2-6 and 8 are patentable at least by virtue of their dependency upon claims 1 or 7.

Respectfully submitted,



Allison M. Tulino
Registration No. 48,294

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

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